

## **REMARKS**

This application has been revised in light of the Office Action mailed on September 16, 2005. Claims 20-36 are pending in the application with claims 20 and 31 being in independent form. By the present Amendment, Claims 20-29 and 31-33 have been amended in part. In the interest of expediting prosecution, Applicants have taken the suggestion of the Examiner and have amended the claims to recite “mid to outer layers of the annulus fibrosus” to help further clarify between the mid to outer layers of the annulus fibrosus and the inner wall of the annulus fibrosus. Applicants reserve the right to present the claims as originally written for prosecution in a further continuing application.

In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested.

### **Claim Rejections under 35 U.S.C. § 102**

In the Office Action, Claims 20-25, 29-32 and 35-36 were rejected 35 U.S.C. §102(e) as being anticipated by Sharkey et al. (U.S. Patent No. 6,126,682). Applicants believe that the amended claims are not anticipated by Sharkey et al. because Sharkey et al. do not disclose “introducing a thermal transmitting element of a thermal probe into mid to outer layers of the annulus fibrosus of the intervertebral disc,” as recited in independent Claim 20. Similar language in independent Claim 31 also helps further distinguish the Applicants’ disclosure from that of Sharkey et al. Rather, in Sharkey et al., the distal portion of the catheter is introduced into and travels within the nucleus pulposus of an intervertebral disc.

Therefore, reconsideration of the rejection under 35 U.S.C. § 102 is respectfully requested and allowance of Claims 20 and 31 is earnestly solicited. Additionally, since Claims 21-24, 29-30, 32 and 35-36 depend directly or indirectly from Claims 20 and 31, Applicants respectfully request allowance of these claims.

### **Claim Rejections under 35 U.S.C §103**

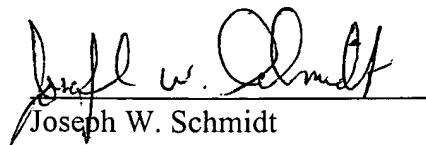
Claims 26-28, 33 and 34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sharkey et al. in view of Hertzmann et al. (U.S. Patent No. 5,084,043). Applicants believe that, inter alia, the amendments to independent Claims 20 and 31 help to overcome this rejection. Therefore, reconsideration of the rejection under 35 U.S.C. §103(a) is respectfully requested and allowance of Claims 26-28, 33 and 34 is earnestly solicited.

### **CONCLUSION**

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presently pending in the application, namely claims 20-36, are believed to be in condition for allowance and patentably distinguishable over the art of record. Accordingly, early and favorable consideration of this application is respectfully requested.

If the Examiner should have any questions concerning this communication or feels that an interview would be helpful, he is requested to call the Applicants' undersigned attorney.

Respectfully submitted,

  
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